



June 20, 2011

Rick Bennion
Regulations Coordinator
California Board of Equalization
450 N Street
Sacramento, CA 95814
richard.bennion@boe.ca.gov

Re: Upcoming Board Agenda Item F1, Proposed Adoption of 18 CCR §1685.5

Dear Mr. Bennion:

On June 21, 2011, the Board is scheduled to vote on the staff's request to adopt proposed Regulation §1685.5 to implement the new use table provisions under R&TC §6452.1. This letter serves as a request for the Board to reject the staff's recommendation.

R&TC §6452.1(d)(2)(A), as amended by SB 86 (Ch. 11-14), directs the Board to calculate the estimated amount of use tax according to a person's state adjusted gross income, and, by July 30 of each calendar year, make the amounts available to the Franchise Tax Board in the form of a table. The statute does not require the Board to promulgate a regulation, nor does it require the Board to include a use tax look-up table as part of a regulation.

CalTax believes that the Board should not promulgate a regulation at this time. The public has not had sufficient opportunity to vet its concerns about the methodology used to prepare the table.

CalTax sent a letter to BOE Chair Jerome Horton on April 25 (following) pointing out numerous problems with the Board's proposed use tax look-up table and urging members of the Board to postpone adoption of the proposed regulations. CalTax's Dave Doerr, Rob Gutierrez and I also verbally expressed our concerns at the staff's May 18, 2011 use tax gap stakeholders' meeting. CalTax's main concern is that the table overstates a taxpayer's use tax liability.

To date, we have not received a response from the Board or staff addressing our concerns. We understand that a second stakeholders' meeting has been scheduled for 1 p.m. on June 28 in Sacramento. However, this date is after the scheduled Board vote on June 21. If the Board approves the staff's recommendation and adopts the regulation, it will be too late to change the table based on comments received from taxpayers on June 28.

In addition, the use tax look-up table should not be included as part of a regulation if the staff believes a regulation is necessary. The regulation should address the methodology, but should not include the actual look-up numbers. If staff wants to change the table in the future and it is included as part of a regulation, they must first go through the regulatory process.

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CalTax has historically supported a use tax look-up table as a way to increase compliance for California's use tax laws, as long as using such a table would not subject taxpayers to an audit. SB 86 addressed CalTax's concerns by adding R&TC §6452.1(g), which precludes the Board from making any understatement determinations for certain taxpayers who elect to use the use tax look-up table. That said, it is in the state's best interest to make the use tax look-up table as enticing as possible so that taxpayers will use it. As currently drafted, a taxpayer with California adjusted gross income as little as \$1 would owe \$7 in use tax. Of course, this is an extreme example, but it should prove the point that the look-up table produces an overstated use tax liability for some taxpayers, as pointed out in CalTax's April 25 letter.

For the foregoing reasons, CalTax respectfully requests the Board to reject staff's recommendation to adopt the regulation in its current form. We also request that staff continue to work with CalTax and other stakeholders with a common goal of meeting the July 30 statutory deadline for making the use tax look-up table available to the Franchise Tax Board.

Sincerely,

A handwritten signature in black ink that reads "Gina Rodriguez". The signature is fluid and cursive, with the first name "Gina" and last name "Rodriguez" clearly distinguishable.

Gina Rodriguez
Vice President of State Tax Policy

cc: The Honorable Jerome Horton, Chair, Board of Equalization
The Honorable Michelle Steel, Vice Chair, California State Board of Equalization
The Honorable Betty T. Yee, California State Board of Equalization
The Honorable George Runner, California State Board of Equalization
The Honorable John Chiang, State Controller



April 25, 2011

The Honorable Jerome Horton, Chair
California State Board of Equalization
450 N Street, MIC 72
Sacramento, CA 95814

Subject: Proposed Regulation 1685.5, Calculation of Estimated Use Tax – Use Tax Table

Dear Honorable Jerome Horton:

The California Taxpayers Association is a nonpartisan, nonprofit association that supports good tax policy, opposes unnecessary taxes and promotes government efficiency. CalTax urges the members of the Board of Equalization to postpone adoption of the proposed regulations for the use tax look-up table.

To date, no interested parties meetings have been held to discuss the use tax table. CalTax believes that the interested parties meeting process is crucial to developing a fair and accurate table. The table proposed in Regulation 1685.5 is neither accurate nor a fair representation of what a taxpayer's use tax liability would be under the law. Listed below are CalTax's concerns:

- **Use Tax Table Methodology Needs Further Review.** The use tax table relies on several estimates that need further clarification to substantiate the accuracy of the table's calculation. For example, the regulation uses data that shows use tax liabilities have grown exponentially during the past several years, despite a global financial crisis and the crash of the housing market.
- **Does the Use Tax Table Seek to Generate Revenue Beyond What is Owed?** Another concern CalTax has is whether the BOE's design of the lookup table generate revenue beyond what is owed. As intended, the use tax table should purely be a tool for the Board to improve compliance.

Of the nine other states currently utilize use tax lookup tables, three states have a set range for taxpayers to use when calculating their use tax liability. Basing the use tax table percentage on a range make the use tax liability computation more reasonable, and reflects differences in consumption patterns.

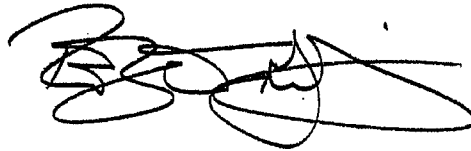
- **Use Tax Table Does Not Account for Different Local Use Tax Rates.** Local sales and use tax rates differ by city and county, and such differences should be reflected in a lookup table. The Board of Equalization could address use tax rate differences by creating a new publication. The BOE already publishes data in Publication 71, which lists the sales and use tax rates for all counties, cities and special districts in California.

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- **Use Tax Table Does Not Reflect Prospective Changes in the Use Tax Rate.** It is uncertain whether the use tax rate will remain at 8.25 percent past June 30. Currently, the Legislature is deliberating whether the rate should be extended. It is uncertain what will happen. The regulation assumes the rate will continue by using the January 1 use tax rate for the entire year.

CalTax looks forward to working with the Board of Equalization members and the Board's staff as the use tax table is implemented. However, for the foregoing reasons, we respectfully request that the Board postpone enactment of the use tax lookup table and vet the regulation through the interested parties' process.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Gutierrez", with a large, stylized flourish at the end.

Robert Gutierrez, Research Analyst
California Taxpayers Association

cc: Honorable Michelle Steel, Vice Chair, California State Board of Equalization
Honorable Betty T. Yee, California State Board of Equalization
Honorable George Runner, California State Board of Equalization
Honorable John Chiang, State Controller
Jeff McGuire, Deputy Director of the Sales and Use Tax Department